

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

BENNY HUBBARD, #141527

Plaintiff,

Civil Action No. 10-14390
Hon. Lawrence P. Zatkoff

v.

RUM LEMON,

Defendant.

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**OPINION AND ORDER ADOPTING
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

This matter comes before the Court on the Magistrate Judge's Report and Recommendation [dkt 91], in which the Magistrate Judge recommends that the Court dismiss Plaintiff's claims against Defendant without prejudice pursuant to Fed. R. Civ. P. 4(m) and that Plaintiff's case be closed. Defendant has filed what the Court construes as objections to the Magistrate Judge's Report and Recommendation [dkt 92].

The Court has thoroughly reviewed the court file, the Report and Recommendation, and Defendant's objections. For the reasons discussed below, the Court ADOPTS the Magistrate Judge's Report and Recommendation. Plaintiff's claims against Defendant are DISMISSED WITHOUT PREJUDICE and Plaintiff's case is CLOSED. The Court will, however, briefly address Plaintiff's objections.

ANALYSIS

RUM Lemon ("Lemon") is the only remaining Defendant from Plaintiff's *pro se* Complaint [dkt. 1]. Plaintiff failed on several occasions to provide Lemon with service of the Complaint. First, on November 24, 2010, and again on March 8, 2013, the United States

Marshals Service mailed Plaintiff's Complaint to Lemon. On each occasion, the waiver of service was returned unexecuted. On April 2, 2013, after twice failing to properly serve Lemon, the Court ordered Plaintiff to provide an address for Lemon by April 19, 2013 [dkt. 90]. Although Plaintiff was warned that failure to do so would result in dismissal of his case against Lemon, Plaintiff still did not provide an address.

Plaintiff's objections focus, in part, on his inability to locate Lemon. Plaintiff asserts that his limited resources make it "unreasonable and unrealistic" for him to locate Lemon [dkt. 92]. The Court finds, however, that Plaintiff has had adequate time to find and provide Lemon with proper notice. Pursuant to Fed. R. Civ. P. 4(m), the Court must dismiss an action without prejudice if a defendant has not been served within 120 days after the complaint is filed. Plaintiff was given nearly three years to provide Lemon with proper service, and yet has failed to do so. Further, should Plaintiff locate Lemon at some point in the future, this dismissal is without prejudice and thus does not bar future action. Lastly, the other objections raised by Plaintiff have been addressed previously by the Court and have no bearing on the present issue.

CONCLUSION

Accordingly, IT IS HEREBY ORDERED that Plaintiff's Complaint is DISMISSED WITHOUT PREJUDICE and that Plaintiff's case is CLOSED.

IT IS SO ORDERED.

S/Lawrence P. Zatkoff
Hon. Lawrence P. Zatkoff
U.S. District Judge

Date: September 16, 2013